

1256, except that contested full evidentiary hearings on the merits may be conducted by telephonic media only with the consent of the alien.

[60 FR 26353, May 17, 1995]

### **§ 3.26 In absentia hearings.**

(a) In any exclusion proceeding before an Immigration Judge in which the applicant fails to appear, the Immigration Judge shall conduct an *in absentia* hearing if the Immigration Judge is satisfied that notice of the time and place of the proceeding was provided to the applicant on the record at a prior hearing or by written notice to the applicant or to the applicant's counsel of record on the charging document or at the most recent address in the Record of Proceeding.

(b) In any deportation proceeding before an Immigration Judge in which the respondent fails to appear, the Immigration Judge shall order the respondent deported *in absentia* if: (1) The Service establishes by clear, unequivocal and convincing evidence that the respondent is deportable; and (2) the Immigration Judge is satisfied that written notice of the time and place of the proceedings and written notice of the consequences of failure to appear, as set forth in section 242B(c) of the Act (8 U.S.C. 1252b(c)), were provided to the respondent in person or were provided to the respondent or the respondent's counsel of record, if any, by certified mail.

(c) Written notice to the respondent at the most recent address contained in the Record of Proceeding shall be considered sufficient for purposes of this section. If the respondent fails to provide his or her address as required under § 3.15(c), no written notice shall be required for an Immigration Judge to proceed with an *in absentia* hearing. This subsection shall not apply in the event that the Immigration Judge waives the appearance of an alien under § 3.25.

[59 FR 1899, Jan. 13, 1994]

### **§ 3.27 Public access to hearings.**

All hearings, other than exclusion hearings, shall be open to the public except that:

(a) Depending upon physical facilities, the Immigration Judge may place reasonable limitations upon the number in attendance at any one time with priority being given to the press over the general public;

(b) For the purpose of protecting witnesses, parties, or the public interest, the Immigration Judge may limit attendance or hold a closed hearing.

(c) In a proceeding before an Immigration Judge pursuant to section 216(c)(4) of the Act concerning an abused alien spouse or an abused child, the Record of Proceeding and the hearing shall be closed to the public, unless the abused alien spouse or abused child agrees that the hearing and the Record of Proceeding shall be open to the public. In the case of an abused child, the Immigration Judge may decide if the hearing and Record of Proceeding shall be open.

[52 FR 2936, Jan. 29, 1987. Redesignated and amended at 57 FR 11571, 11572, Apr. 6, 1992]

### **§ 3.28 Recording equipment.**

The only recording equipment permitted in the proceeding will be the equipment used by the Immigration Judge to create the official record. No other photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

### **§ 3.29 Continuances.**

The Immigration Judge may grant a motion for continuance for good cause shown.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

### **§ 3.30 Additional charges in deportation hearings.**

At any time during the proceeding, additional or substituted charges of deportability and/or factual allegations may be lodged by the Service in writing. The respondent shall be served with a copy of these additional charges and allegations and may be given a reasonable continuance to respond thereto.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]